



Attorney Docket No. 2000P13034WOUS

UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Bernd Schessl et al
Application Number: 10/606,008
Filing Date: 06/25/2003
Group Art Unit: 3637
Examiner: James Orville Hansen
Title: DISHWASHER

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Pursuant to 37 CFR 1.192, Appellant hereby files an appeal brief in the above-identified application. This Appeal Brief is accompanied by the requisite fee set forth in 37 CFR 1.17(f) and a petition for extension of time for one (1) month.

12/17/2007 FMETEKI1 00000068 502786 10606008

02 FC:1402 510.00 DA

Table of Contents

(1)	REAL PARTY IN INTEREST	3
(2)	RELATED APPEALS AND INTERFERENCES	3
(3)	STATUS OF CLAIMS	3
(4)	STATUS OF AMENDMENTS	3
(5)	SUMMARY OF CLAIMED SUBJECT MATTER	3
(6)	GROUND OF REJECTION TO BE REVIEWED ON APPEAL	4
(7)	ARGUMENT	4
(8)	CONCLUSION	10
	CLAIMS APPENDIX	11
	EVIDENCE APPENDIX	14
	RELATED PROCEEDINGS APPENDIX	15

(1) REAL PARTY IN INTEREST

The real party in interest is BSH Bosch und Siemens Hausgeraete GmbH.

(2) RELATED APPEALS AND INTERFERENCES

There are no appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) STATUS OF CLAIMS

Claims 8-15 are pending in the application and have been finally rejected. The final rejection of claims 8-15 is being appealed.

(4) STATUS OF AMENDMENTS

A Final Rejection was mailed on July 18, 2007. No Amendment has been filed subsequent to the Final Rejection.

(5) SUMMARY OF CLAIMED SUBJECT MATTER

CLAIM 8

Independent claim 8 of the present application recites a dishwashing machine 1 that includes a dishwashing machine housing (see Figure 1 and paragraph [0012]) having an internal height and a pair of retractable pull-out upper and lower containers mounted one above the other in the housing (3 and 4, paragraph [0012]). Each of the retractable pull-out containers contains a dishwashing system (see paragraph [0001]). The upper and lower containers have a total height less than the internal housing height (see paragraph [0004]).

(6) GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- a. Whether claims 8 and 10-11 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by WIPO publication 98/33426?
- b. Whether claims 9 and 12-14 are unpatentable under 35 U.S.C. § 103(a) over the WIPO publication 98/33426 in view of German publication 3501364?
- c. Whether claim 15 is unpatentable under 35 U.S.C. § 103(a) over the WIPO publication 98/33426 in view of German publication 3501364, and further in view of US Patent No. 4,818,043?

(7) ARGUMENT

- a. Whether claims 8 and 10-11 are unpatentable under 35 U.S.C. § 102(b) as being anticipated by WIPO publication 98/33426.

Claim 8 of the present application recites a dishwashing machine having a dishwashing machine housing with an internal height and a pair of retractable pull-out upper and lower containers mounted one above the other in the housing. Each of the retractable pull-out containers contains a dishwashing system and the upper and lower containers have a total height less than the internal housing height.

WO 98/33426 discloses a dishwashing machine that, according to Page 3 of the Office Action, comprises a dishwashing machine housing [Fig. 8] having an internal height; a pair of retractable pull-out upper and lower containers [202a, 202b] mounted one above the other in the housing; each of the containers

containing a dishwashing system; and the containers have a total height less than the internal height of the housing as readily apparent to the examiner. The lower container capable of being arranged adjustably above a recess on the housing as is known in the art. The containers having different heights with the upper container having a height greater than the height of the lower container [Fig. 7].

Appellants respectfully request withdrawal of this rejection.

b. Whether claims 9 and 12-14 are unpatentable under 35 U.S.C. § 103(a) over the WIPO publication 98/33426 in view of German publication 3501364?

Appellants respectfully submit that neither WO 98/33426 nor the German publication 35 01 364, either alone or in combination, teach or disclose the dishwashing machine recited in claim 9 of the present application. For example, claim 9 of the present application recites that the housing of the dishwashing machine recited in claim 8 of the present application has a pair of opposed sides and a base, each of the retractable pull-out upper and lower containers having a front piece and being mounted in the housing such that the retractable pull-out upper and lower containers are located between the opposed sides of the housing and the front pieces of the retractable pull-out upper and lower containers form a front of the dishwashing machine. Claim 9 of the present application also recites that the lower container is above the base of the housing and the dishwashing machine further includes means, extending between the dishwashing machine and a surface on which the dishwashing machine is to be supported, for maintaining the base of the housing at a height above the surface on which the dishwashing machine is to be supported.

WO 98/33426 does not teach or disclose a dishwashing machine having a housing whose sides and base are raised above a surface on which the dishwashing machine is supported. Instead, as seen, for example, in Figure 8 of WO 98/33426, that reference discloses a dishwashing machine having a housing whose sides extend to the surface on which the dishwashing machine is supported and whose base rests on the surface on which the dishwashing machine is supported. DE 35 01 364 does not teach or disclose a dishwashing machine having upper and lower pull-out containers, as recited in claim 8 of the instant application.

Appellants further submit that neither WO 98/33426 nor DE 35 01 364, either alone or in combination, teach or disclose the dishwashing machine recited in claim 15 of the present application as currently amended. For example, claim 15 of the present application as currently amended recites additional features of the dishwashing machine as recited in claim 8 of the present application which, as recited in claim 12 of the present application from which claim 15 ultimately depends, has means for maintaining the base of the housing at a height above the surface on which the dishwashing machine is to be supported and which, as recited in claim 13 of the present application from which claim 15 ultimately depends, includes a pair of front and a pair of rear installation feet attached thereto with each of the opposed sides of the housing including a forward portion extending between an edge of the respective opposed side that is adjacent one of the upper and lower pull-out containers and a back portion of the opposed side and with the forward and back portions of each of the opposed sides of the housing each having a bottom edge with the bottom edge of the forward portion of each of the opposed sides of the housing being higher than the bottom edge of the back portion of each of the opposed sides of the housing, whereby a pedestal recess is formed under the forward portions of the opposed sides of the housing that has a depth extending from the front of the dishwashing machine to the back portions of

the opposed sides of the housing and has a height above the surface on which the dishwashing machine is to be supported that is greater than the height of the back portions of the opposed sides of the housing above the surface on which the dishwashing machine is to be supported and the pair of front installation feet being set back on the housing from the front of the dishwashing machine at least as far as the depth of the pedestal recess. Specifically, claim 15 of the present application as currently amended recites the additional features that the dishwashing machine includes a base panel set back by the depth of the pedestal recess and the feature that the bottom edge of the back portion of each of the opposed sides of the housing is at a height above the surface on which the dishwashing machine is to be supported such that the bottom edge of the back portion of each of the opposed sides of the housing does not contact and is not supported on the surface on which the dishwashing machine is to be supported. The base panel recited in claim 15 of the present application as currently amended extends between the base of the housing and the surface on which the dishwashing machine is to be supported with the pair of front and the pair of rear installation feet being disposed below the base of the housing and the base panel has a height substantially that of the height of the pair of front and the pair of rear installation feet below the base of the housing and is set back on the housing from the front of the dishwashing machine at a depth less than the depth at which the pair of front installation feet are set back on the housing, whereby the base panel covers the pair of front installation feet from view from the front of the dishwashing machine.

WO 98/33426 does not teach or disclose the dishwashing machine recited in claim 15 of the present application as currently amended. For example, each of the sidewalls 207 of the arrangement disclosed in WO 98/33426 extend to the floor surface on which the dishwasher of WO 98/33426 is supported. In contrast, the bottom edge of the back portion of each of the opposed sides of the housing of the

dishwashing machine recited in claim 15 of the present application as currently amended is at a height above the surface on which the dishwashing machine is to be supported such that the bottom edge of the back portion of each of the opposed sides of the housing does not contact and is not supported on this surface.

Appellants respectfully request withdrawal of this rejection.

c. Whether claim 15 is unpatentable under 35 U.S.C. § 103(a) over the WIPO publication 98/33426 in view of German publication 3501364, and further in view of US Patent No. 4,818,043?

As explained above, neither WO 98/33426 nor the German publication 35 01 364, either alone or in combination, teach or disclose the dishwashing machine recited in claim 9 of the present application, from which claim 15 depends.

US Patent No. 4,818,043 does not remedy the deficiencies of WO 98/33426 nor German publication 35 01 364. Indeed, US Patent No. 4,818,043 is not available as a reference as it is non-analogous.

“In order to rely on a reference as a basis for rejection of applicant’s invention, the reference must either be in the field of applicant’s endeavor or, if not, then reasonably pertinent to the particular problem with which the inventor was concerned.”
(M.P.E.P. § 2141.01(a)I.)

US Patent No. 4,818,043 is neither within the field of appellants’ endeavor nor reasonably pertinent to the particular problem with which the inventor was concerned.

The field of appellants' endeavor is the field of dishwashing machines having retractable pull-out containers, each containing a dishwashing system.

In stark contrast, US Patent No. 4,818,043 is directed to the completely different and unrelated field of display and marketing devices for displaying and marketing refrigerated or frozen products such as refrigerated foods, floral products, frozen foods, and the like. Clearly, US Patent No. 4,818,043 is not within the field of appellants' endeavor.

US Patent No. 4,818,043 is also not reasonably pertinent to the particular problem with which the inventor was concerned.

The inventor was concerned with providing a dishwashing machine that provides a continuous base panel when placed in a row of kitchen appliances. [0003].

In stark contrast, US Patent No. 4,818,043 is concerned with the completely different and unrelated problem of rectangular frames of doors and the rectangular frames for receiving the doors in display and marketing devices being visible to a customer, interfering with a customer's view of merchandise, conduction of heat by the rectangular frames, and condensation on the door frames. (col. 1, lines 23-40).

Clearly, US Patent No. 4,818,043 is not reasonably pertinent to the particular problem with which the inventor was concerned.

Since US Patent No. 4,818,043 is not within the field of appellants' endeavor nor reasonably pertinent to the particular problem with which the inventor was concerned, US Patent No. 4,818,043 is non-analogous art and is not available

in an obviousness rejection.

Appellants respectfully request withdrawal of this rejection.

(8) CONCLUSION

In view of the foregoing discussion, it is respectfully requested that the Honorable Board of Patent Appeals and Interferences overrule the final rejection of Claims 8-15 over the cited art, and hold that the Appellant's claim be allowable over such art.

Respectfully submitted,



Russell W. Warnock

Registration No. 32,860

December 13, 2007

BSH Home Appliances Corporation
100 Bosch Blvd
New Bern, NC 28562
Phone: 252-672-7927
Fax: 714-845-2807
russ.warnock@bshg.com

CLAIMS APPENDIX

1-7 (Cancelled).

8. A dishwashing machine, comprising:
a dishwashing machine housing having an internal height;
a pair of retractable pull-out upper and lower containers mounted one above the other in said housing;
each of said retractable pull-out containers containing a dishwashing system; and
said upper and lower containers having a total height less than said internal housing height.

9. The dishwashing machine according to claim 8, wherein said housing has a pair of opposed sides and a base, each of said retractable pull-out upper and lower containers having a front piece and being mounted in said housing such that said retractable pull-out upper and lower containers are located between said opposed sides of said housing and said front pieces of said retractable pull-out upper and lower containers form a front of the dishwashing machine and said lower container is above said base of said housing and further comprising means, extending between the dishwashing machine and a surface on which the dishwashing machine is to be supported, for maintaining said base of said housing at a height above the surface on which the dishwashing machine is to be supported.

10. The dishwashing machine according to claim 8, including said upper and lower containers have different heights.

11. The dishwashing machine according to claim 10, including said upper container has a height greater than the height of said lower container.

12. The dishwashing machine according to claim 9, wherein said means for maintaining said base of said housing at a height above the surface on which the dishwashing machine is to be supported includes a pair of front and a pair of rear installation feet attached thereto.

13. The dishwashing machine according to claim 12, wherein each of said opposed sides of said housing includes a forward portion extending between an edge of the respective opposed side that is adjacent one of said upper and lower pull-out containers and a back portion of said opposed side, said forward and back portions of each of said opposed sides of said housing each having a bottom edge, and said bottom edge of said forward portion of each of said opposed sides of said housing being higher than said bottom edge of said back portion of each of said opposed sides of said housing, whereby a pedestal recess is formed under said forward portions of said opposed sides of said housing having a depth extending from the front of the dishwashing machine to said back portions of said opposed sides of said housing and having a height above the surface on which the dishwashing machine is to be supported that is greater than the height of said back portions of said opposed sides of said housing above the surface on which the dishwashing machine is to be supported and including said pair of front installation feet are set back on said housing from the front of the dishwashing machine at least as far as the depth of said pedestal recess.

14. The dishwashing machine according to claim 12, including each of said pair of front and said pair of rear installation feet being height adjustable.

15. The dishwashing machine according to claim 13, and further comprising a base panel set back by the depth of said pedestal recess and extending between said base of said housing and the surface on which the dishwashing machine is to be supported, said pair of front and said pair of rear installation feet being disposed below said base of said housing, said base panel having a height substantially that of the height of the pair of front and said pair of rear installation feet below said base of said housing, and said base panel being set back on said housing from the front of the dishwashing machine at a depth less than the depth at which said pair of front installation feet are set back on said housing, whereby said base panel covers said pair of front installation feet from view from the front of the dishwashing machine, and said bottom edge of said back portion of each of said opposed sides of said housing being at a height above the surface on which the dishwashing machine is to be supported such that said bottom edge of said back portion of each of said opposed sides of said housing does not contact and is not supported on the surface on which the dishwashing machine is to be supported.

EVIDENCE APPENDIX

None

RELATED PROCEEDINGS APPENDIX

None



ATTORNEY DOCKET NO.: 2000P13034WOUS

CERTIFICATE OF MAILING UNDER 37 CFR 1.8

Serial No.: 10/606,008
Filing Date: 06/25/2003
Examiner: Bernd Schessl et al
Art Unit: 3637
Applicant: James Orville Hansen
Title: DISHWASHER
Date of Deposit: December 13, 2007
Type of Document(s): Certificate of Mailing (1 page);
Petition for Extension of Time, Original and Copy (2 pages);
Fee Transmittal Form, Original and Copy (2 pages);
Appeal Brief (15 pages);
Return postcard.

CERTIFICATE OF MAILING UNDER 37 C.F.R. Section 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on:

December 13, 2007

Date of Deposit

Russell W. Warnock

Name of Person Signing

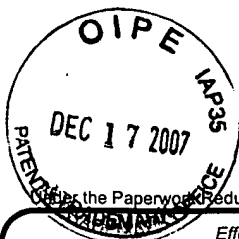


Signature

Russell W. Warnock

Printed Name

Registration No. 32,860



PTO/SB/17 (10-07)

Approved for use through 06/30/2010. OMB 0651-0032

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

Effective on 12/08/2004.

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL

For FY 2008

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$) 510.00

Complete if Known

Application Number	10/606,008
Filing Date	06/25/2003
First Named Inventor	Bernd Schessl et al
Examiner Name	James Orville Hansen
Art Unit	3637
Attorney Docket No.	2000P13034WOUS

METHOD OF PAYMENT (check all that apply)☐ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____☒ Deposit Account Deposit Account Number: 502786 Deposit Account Name: BSH Home Appliances Corp.

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, except for the filing fee☒ Charge any additional fee(s) or underpayments of fee(s) under 37 CFR 1.16 and 1.17 ☒ Credit any overpayments

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

FEE CALCULATION**1. BASIC FILING, SEARCH, AND EXAMINATION FEES**

Application Type	FILING FEES		SEARCH FEES		EXAMINATION FEES		Fees Paid (\$)
	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	Fee (\$)	Small Entity Fee (\$)	
Utility	310	155	510	255	210	105	
Design	210	105	100	50	130	65	
Plant	210	105	310	155	160	80	
Reissue	310	155	510	255	620	310	
Provisional	210	105	0	0	0	0	

2. EXCESS CLAIM FEES**Fee Description**

	Fee (\$)	Small Entity Fee (\$)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	210	105
Multiple dependent claims	370	185

Total Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 20 or HP =	x	50.00	=

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims	Extra Claims	Fee (\$)	Fee Paid (\$)
- 3 or HP =	x	210.00	=

HP = highest number of independent claims paid for, if greater than 3.

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is \$260 (\$130 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee (\$)	Fee Paid (\$)
- 100 =	/ 50 =	(round up to a whole number) x	=	

4. OTHER FEE(S)

Non-English Specification, \$130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief Fee

Fees Paid (\$)

510.00

SUBMITTED BY

Signature	<i>Russell W. Warnock</i>	Registration No. (Attorney/Agent) 32,860	Telephone 252-672-7927
Name (Print/Type)	Russell W. Warnock		Date December 13, 2007

This collection of information is required by 37 CFR 1.136. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 30 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.